1941. **File No.** O. Motor Tax/41

Legal Department

A **BRANCH**

Subject:— Opinions under the Motor Vehicles Taxation Act, 1935

2135

File No. O. Motor Tax/41

Gen. 194.e.

1145-A

C O N T E N T S.

Legal Department File No. C Motor Tax/41.

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3.	10946 19-12-40 / 1990 6-3-41.	Whether the Provl. Govt. can levy a tax on motor goods vehicles registered in Baroda State and are for the transport or haulage of goods or materials in this province on an "unladen weight" basis.-	7-8.
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		against the judgment debetor in the appropriate Hyd. State Court.-	15-16.
	8682 4-10-41	Whether any action is necessary against the President , D.L.B. Thana who treatens to file a suit if no reply is received to his letter within a week.-	17-20.
7.	9587 6-11-41	Whether there is any objection to the excess amount already paid to the D.L.B. Thana being recovered from the current year's grant.-	21-24. 21-22 Typed

EVY. 6/7.

R.I. No. 715, dated 21-1-41

Submitted.

The question for consideration is whether the municipalities now established at Khed and Rajapur can legally claim compensation which the notified area committees at these places received under section 9(1) of the Bombay Motor Vehicles Tax Act, 1935.

2. After the passing of the Bombay Motor Vehicles Tax Act, 1935, the notified area committees or municipalities were debarred from imposing tolls on motor vehicles or trailors save as provided in section 14 of the Bombay Motor Vehicles Act, 1935 (vide sec. 59(iii) of the Bombay District Municipal Act, 1901. However under section 9 of the Bombay M.V. Tax Act, 1935, it was provided that Government shall pay annually certain sum to the local authorities as provided in the said section. The notified area committees therefore acquired a statutory right under the said section in this respect. Section 191(1) provides that when any area ceases to be a notified area the property and rights which, prior to such ceasing to be a notified area, vested in the person or committee appointed for such area under clause (c) of sub-section (1) of sec. 188 shall, subject to all charges and liabilities affecting the same, vest in the local authority constituted for such area. Consequently the right to receive annually contribution under Sec. 9(1) of the Bombay

M.V. Tax Act, 1935 would, under section 191(1) of the Bombay Distt. Muni. Act, 1901 on the abolition of the notified area, vest in the municipality constituted in its place.

Please see U.R. to the G.D., No. 1283, dated the 11th February 1941.

EVY. 8/7.

Office of the R.L.A.

The view taken by the General Department in paragraph 4 of its office note at p. 9 ante is correct.

Sd/- P.N.MOOS.

Remembrancer of Legal Affairs.

U.R. to the G.D., No. 1283, dated the 11th February 1941.

EVI. 7/7.

Office of the R.L.A.
27 & 7/11/41

If the conservancy lorry proposed to be purchased by the District Medical Officer, G.I.P. Railway, Bhusawal, is as a matter of fact ~~xxxxxx~~ neither maintained by a local authority nor maintained under contract for a local authority but is maintained by the railway on its own authority and for its own purposes, it will not be covered by item (3) in the schedule to Government Notification, Home Department, No. 6832/3XV, dated the 24th June 1936. From the report at p. 11 ante, although it appears that at present no arrangements for conservancy disposal exist between the Municipality and the railway authorities at Bhusawal, it is not clear whether the conservancy lorry in question, after it is purchased, is or is not to be maintained by or under contract for a local authority e.g. the Bhusawal Municipality if the railway area falls within the limits of that Municipality.

Sd/-
Remembrancer of Legal Affairs.

U.R. to R.D., No. 1390, dated the 14th February 1941.

EVY. 7/7.

Office of the R.L.A.

The question for the consideration of the Remembrancer of Legal Affairs is whether the Provincial Government can levy a tax on motor goods vehicles registered in Baroda State and used for the transport or haulage of goods or materials in this Province on an "unladen weight" basis when in respect of this class of vehicles, the basis in A-III in Schedule I to the Bombay Motor Vehicles Tax Act, 1935, is their laden weight. The answer is in the affirmative.

2. The vehicles in question will be taxable as motor vehicles visiting the Presidency within the meaning of Schedule I-C to the Bombay Motor Vehicles Tax Act, 1935 and the rates will be those prescribed in the rules viz. in this case those specified in Rule 21-A and the Second Schedule to the Bombay Motor Vehicles Tax Rules, 1940. The maximum rates specified in Schedule I-A (including those under III in respect of goods vehicles with reference to their laden weight) are not applicable to visiting vehicles falling under Schedule I-C to the Bombay Motor Vehicles Tax Act, 1935. Consequently in the classification in the Second (or if desired even in the First) Schedule to the Bombay Motor Vehicles Tax Rules, 1940, there would be no legal objection to prescribe separate rates for goods vehicles with reference to their unladen weight. The proposal to tax Baroda goods vehicles on their unladen weight basis will therefore be legally in order in view of the provisions of Schedule I-C read with section 20 of the Bombay Motor Vehicles Tax Act, 1935.

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1990, dated the 6th March 1941.

EVY. 7/7.

R.I. No. 5593/25-6-41.

Office of the R.L.A.

The question for consideration are:-

(1) whether the expression "net average annual income" means the income actually collected by the local bodies during the three years including recoveries of arrears of past years or the income which represented the demands for the 3 years;

(ii) whether Government has a right under section 9(1) to refix or revise the contribution once determined on the ground of mistake as in the present case;

(iii) what would be the effect if contribution is fixed without consulting a local body;

(iv) whether Government can recover over-payments made to Thana District Local Board in the present case.

2. Question No. (1) :- Section 9(1) of the Bombay Motor Vehicles Tax Act, 1935, provides that the Provincial Government shall pay annually to any local board which at the commencement of this Act was levying tolls on vehicles or animals and to any other local authority which at the said date was levying or collecting tolls on motor vehicles or trailors a sum determined by the Provincial Government after consulting the local board or local authority concerned as representing the net average annual income of such local board or local authority from such tolls, after deducting costs of collection, during the three years ending on the 31st day of March 1936, plus 10 per centum. The term 'income' has not been defined in the Act. The dictionary meaning of the term 'income' means periodical (usually annual) receipts from one's business, lands, work investment, etc. (see Oxford concise dictionary) and the same is the legal acceptance of the term according to Stroud's Judicial Distionary. "Income" signifies" what

comes in" (per Selborne, C. Jones V. Ogle, 42 L. g. Ch. 336). It is as large a word as can be used to denote a person's receipts (per gerrel M.R. Re Huggins, 51 L.G?Ch. 938). 'Income' to be taxable under Indian Income Tax Act means 'actual receipts' and the income which became due by way or interest, but which was not realized, was not taxable (44 Mad. 65; Jain's Indian Income Tax Act, page 92). Rule 221 read with Local Boards Account Form No. 20 appended to the Bombay Local Boards Account Code, 1935, clearly indicates that the acutal receipts during the year constitute the income of the board for that year. It would also appear from the language of the said section 9(1) read as a whole that what intended was the determination of the actual net receipts "after deducting costs of collection during the three years ending etc". It has clear reference to the collection during the three years. Costs of collection beyond the period named have no relevance and the part of the demand left in arrears beyond the period will be eschewed in reckoning 'income' on the other hand, costs of collection in respect of the past arrears collected during the period will be relevant, and consequently the collections concerned will be part of the income of the period. The view taken by Government in Government Memorandum No. 1844/33-C dated 6th February 1940, appears therefore to be correct.

3. Question No. (ii):- It is no doubt true that a contribution fixed by Government under section 9(1) of the Bombay Motor Vehicles Act is not liable to revision from time to time; but a contribution fixed on mistaken data based on a wrong interpretation of section 9(1) as in the present case can be revised. The District Local Board had been consulted and the mistake was mutual.

4. Question No. (iii):- Section 9(1) of the Bombay Motor Vehicles Act provides for determining Government's contribution after consulting the local board or local authority. The provision is for consultation only and not for consent. Consultation of the local board or local authority is intended for the purpose of accuracy of the figures of income during the three years ending on 31st day of March 1936, and appears to be merely directory. Failure to consult the board before revising the contribution would therefore amount to an irregularity only.

5. Question No. (iv):- Obviously the overpayments were made by Government to the Thana District Local Board due to miscalculation of the net annual income under section 9(1), which was a mutual mistake of fact and it is against justice and conscience that the Thana District Local Board should retain the over-payments (see Kerr on Fraud and Mistake, page 635). Consequently the ~~xxxxxxx~~ over-payments are legally recoverable from the Thana District Local Board.

6. The suit, if instituted by the Thana District Local Board, can be resisted.

Sd/-

Remembrancer of Legal Affairs.

U.R. to G.D., No. 5958, dated the 9th July 1941.

EVY. 7/7.

R.I. No. 6630./27-7-41.

Office of the R.L.A.

It is legally feasible for Government to file a suit in British India and obtain a decree against the defaulter Surajmal in respect of the tax payable by him under the Bombay Motor Vehicles Tax Act, 1935, and thereupon to institute a suit against the judgment debtor in the appropriate Hyderabad State Court on the basis of the decree already obtained. The view of the Secretary, H.D., at page 13 ante is correct.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D., No. 7227, dated the 16th August 1941.

EVY. 7/7.

Submitted.

For the reasons stated in his opinion No. 5958, dated 9-7-1941, the R.L.A. advised that the suit, if instituted by the D.L.B., Thana, can be resisted. In his letter No. 4303, dated 8-9-41, the President, D.L.B., Thana, refers to G.D. Memo. No. 1844/33-C, dated 19-6-1941, a copy of which was forwarded to him by the Collector of Thana, and requests to know whether Government has arrived at any decision in the matter. The President thereafter says that if no reply is received to his letter within a week of the receipt thereof, the Board will be compelled to file the suit. The said letter of the President is now shown to the R.L.A. for his advise whether any action is necessary at his stage.

PP. 27-31 of O-Motor-Tax/41.

PP. 39-41 ante(see also pp. 51-53 ante)

p. 61 of G.D. File 1844/33 pt. III.

Vide Para 2 at p. 55 ante

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19.

Office of the R.L.A.

No action is necessary on the letter of the President, District Local Board, Thana, at this stage.

Sd/-
Remembrancer of Legal Affairs.

U.R. to G.D., No. 8682, dated 4-10-1941.

EVY. 7/7.

Office of the R.L.A.

As the Court by its order dated 30th October 1941 has granted a temporary injunction restraining Government from either recovering the amount of Rs. 29,180 from the plaintiff Board or from deducting the same from the amount of grant payable to the Board for the year 1941-42, it would not be open to Government to make any deduction from the grant payable to the District Local Board, Thana, either for the current year or for any future year pending the disposal of the suit. A copy of the process served on the Collector of Thana in this connection is sent for information.

Sd/-

Remembrancer of Legal Affairs.

U.R. to G.D., No. 9587, dated the 6th November 1941.

EVI. 7/7.